



STATE OF DELAWARE

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November 17, 2015

MEMORANDUM

TO: The Chair and Members of the Commission

FROM: Pamela Knotts, Regulatory Policy Administrator *PRK*

SUBJECT: IN THE MATTER OF THE PETITION OF VIVINT SOLAR, INC. FOR A
DECLARATORY ORDER (FILED AUGUST 28, 2015) - PSC DOCKET NO. 15-1358

Petition

On August 28, 2015, Vivint Solar, Inc. ("Vivint Solar") filed a petition (the "Filing") with the Commission asking for the Commission to issue a declaratory order that Vivint Solar's operations in Delaware would not subject it or its affiliates to regulation as a (1) "public utility" under 26 Del. C. § 201 or (2) an "electric supplier" under 26 Del. C. § 1012(c)(2). Vivint Solar requests this relief because it seeks to serve residential customers in Delaware with rooftop solar photovoltaic installations on the customer's property, behind their utility electric meters.

In the Filing, Vivint Solar states that it "offers solar energy to qualified residential customers primarily through long-term customer contracts in the form of purchase-power agreements (PPAs), under which a customer agrees to purchase all of the power generated by a solar energy system installed on the customer's rooftop, as well as solar leases, under which a customer leases the solar energy system that is installed on the customer's real property. Under either arrangement, Vivint Solar installs, operates, and maintains the solar energy system throughout the term of the agreement." The solar energy systems installed are owned by Vivint Solar's affiliates and financing parties.

Vivint Solar also states in its Filing that the solar systems installed pursuant to Vivint Solar's PPAs and solar leases are "located on private property and on the customer's side of the utility electric

meters.” They state “these systems do not use the central power stations, wires, distribution facilities, or transmission facilities of a public utility to generate and deliver electricity to Vivint Solar’s customers.”

Background

In the spring of 2015, Staff was contacted by a licensed California attorney who was acting on behalf of a client. He stated his client was “looking to begin offering residential rooftop solar in Delaware”. At that time Staff gave a non-legal opinion that the PSC does not regulate residential solar installers. Staff’s attorney advised Staff that the attorney should hire a Delaware licensed attorney to obtain what is called a “third-party legal opinion letter”, which is the proper procedure to give his client the guarantees that it is seeking. Staff’s attorney also communicated this position with this attorney.

The Commission promulgated regulations in 26 Del. Admin C § 3001, ***Rules for Certification and Regulation of Electric Suppliers***, based on 26 Del. C. §1001-1020. This was a fully vetted process with workshops for public comments. Staff believes that these regulations are clear in defining “Electric Supplier” and “Net Metering”; Section 8.0 of the regulations expound upon net metering. In 26 Del. C. 1014 (d) the statute reads “net energy metering for customers who own and operate, lease and operate, or contract with a third party that owns and operates an electric generation facility that...”; and correspondingly the regulations state in 26 Del. Admin C § 3001- 8.1.1. “the customer owns and operates; leases and operates; or contracts with a third party who owns and operates the electric generation facility with a capacity that...” From what Staff can ascertain from the Filing, Vivint Solar is providing services based upon a third-party ownership or financing agreement related to the electric generation facility it provides for net metering. Currently Delaware has several solar leasing companies conducting business in the state and they are not certified by the Commission because they are under the net metering regulations.

In this instant docket Staff received comments from the Energy Freedom Coalition of America, LLC (“EFCA”). EFCA is a national advocacy group that promotes the use of rooftop and other customer-owned and third-party owned distributed solar electrical generation for residential and commercial applications. These comments were distributed in the Commissioners’ packets.

Recommendation

Staff respectfully submits to the Commission to dismiss this petition for a declaratory order. There are several solar leasing companies conducting business in Delaware that would be involved in this declaratory order and Vivint Solar is only requesting that neither Vivint Solar nor its subsidiary Vivint Solar Developer, LLC, nor any of its affiliates would be regulated by the Commission either as a public utility or as an electric supplier. Vivint Solar has other means to determine whether it is a “Public Utility” or an “Electric Utility”; it can hire a Delaware licensed attorney to obtain what is called a “third-party legal opinion letter”, which is the proper procedure to give the guarantees that it is seeking without coming before the Commission. The Commission has already promulgated regulations addressing net metering in 26 Del. Admin C §3001- 8.0 and more specifically in section 8.1.1. Vivint Solar has not presented sufficient information and arguments to support granting this petition.